

Rec'd 11/21/18

1 TIM WARD
2 TULARE COUNTY DISTRICT ATTORNEY
3 NADYA HANNAH, DEPUTY DISTRICT ATTORNEY
4 SBA#284897
5 221 S. MOONEY BLVD., ROOM 224
6 VISALIA, CA 93291
7 TELEPHONE: (559) 636-5494
8 FAX: (559) 730-2658

Attorneys For Real Party In Interest

TULARE COUNTY SUPERIOR COURTS
STATE OF CALIFORNIA, VISALIA DIVISION

10 In Re SEARCH WARRANT #013487
11 YORAI BENZEEVI,
12 Moving Party,
13 v.
14 SUPERIOR COURT OF THE COUNTY OF
15 TULARE,
16 Respondent,
17 TULARE COUNTY DISTRICT ATTORNEY,
18 Real Part in Interest.

CASE NO: _____
REAL PARTY IN INTEREST'S
OPPOSITION TO SURREPLY IN
SUPPORT OF SEAL & FOR A
PROTECTIVE ORDER REGARDING
PORTIONS OF DR. BENZEEVI'S
MEMORANDUM AND OPPOSITION
TO MOTION TO SEAL AND FOR A
PROTECTIVE ORDER OF PORTIONS
OF DR. YORAI BENZEEVI'S
SURREPLY IN SUPPORT OF HIS
MOTION FOR RETURN OF SEIZED
PROPERTY AND RELATED
EVIDENTIARY HEARING AND
SUPPORTING DECLARATION OF
DUROSS O'BRIAN; DECLARATION
OF BEVAN A DOWD IN SUPPORT
THEREOF.

Date: November 9th, 2018
Time: 2:00 pm
Dept: 13

23 Respondent, the People of the State of California, by and through their
24 attorneys, TIM WARD, District Attorney, and NADYA HANNAH, Deputy District Attorney,
25 submit this REAL PARTY IN INTEREST'S OPPOSITION TO SURREPLY IN SUPPORT OF
26 SEAL & FOR A PROTECTIVE ORDER REGARDING PORTIONS OF DR. BENZEEVI'S
27 MEMORANDUM AND OPPOSITION TO MOTION TO SEAL AND FOR A PROTECTIVE
28 ORDER OF PORTIONS OF DR. YORAI BENZEEVI'S SURREPLY IN SUPPORT OF HIS
OPPOSITION TO SURREPLY AND MOTION TO SEAL

1 MOTION FOR RETURN OF SEIZED PROPERTY AND RELATED EVIDENTIARY
2 HEARING AND SUPPORTING DECLARATION OF DUROSS O'BRIAN; DECLARATION
3 OF BEVAN A DOWD IN SUPPORT THEREOF. This motion is based upon the pleadings,
4 points and authorities, evidence, and argument presented at the hearing of the matter.
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7 **ARGUMENT AND AUTHORITY**
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9 **I. Respondent's Opposition to Movant's Surreply in Support of Motion to Seal and**
10 **for a Protective Order**

11 The Movant raised three arguments in its surreply. These additional arguments still do
12 not make Movant meet its burden of presenting information sufficient to seal the record.

13 First, the Movant alleged the fact that Dr. Benzeevi embezzled funds from the Tulare
14 Local Healthcare District is an incorrect notion (Movant's Surreply in Support of Sealing at
15 2). The Movant delved into the Management Services Agreement and resolution 852 to select
16 the authority given to HealthCare Conglomerate Associates, LLC ("HCCA") and Dr.
17 Benzeevi (Movant's Surreply in Support of Sealing at 2 & 3). The Movant selectively chose
18 to present what was seemingly authorized to Dr. Benzeevi and completely ignored what was
19 not authorized: self-interested transactions in violation of the Tulare Regional Medical
20 Center's conflict of interest policies, in violation of Dr. Benzeevi's Fiduciary duty, and in
21 violation of California's conflict of interest laws. The known facts of this case indicate that
22 whether consent claimed was properly obtained is still at dispute. The Movant conveniently
23 based its allegation solely on an unwarranted assumption. Therefore, such allegations lend no
24 help to the Movant's burden of proof and should be disregarded by the Court.

25 Second, the Movant alleged that the redactions Dr. Benzeevi proposes are narrowly
26 tailored and seek to redact only that information related to Dr. Benzeevi's unrelated personal
27 financial information. Specifically, the Movant seeks to seal the deposits and balances of Dr.
28 Benzeevi's bank account since the Respondent agrees to redact the account number. The

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2 Movant alleged that analysis of Dr. Benzeevi's personal financial information is not
3 appropriate for public consumption (Movant Surreply in Support of Sealing at 3). However,
4 contrary to the Movant's allegation, here such personal financial information is related to
5 public fund misappropriation and the allegedly narrowly tailoring does not address this issue.
6 After all, what information about a bank account can be more relevant than the account
7 activities. The Court may seal irrelevant financial information in whatever form it takes, either
8 removing it from record or sealing it for good cause. *NBC Subsidiary (KNBC-TV), Inc. v*
9 *Superior Court, supra, 20 C4th at 1222. Overstock.Com, Inc. v Goldman Sachs Group, Inc.*
10 *(2014) 231 CA4th 471, 503–506, 180 CR3d 234.* However, the individual's financial
11 information here is by no means irrelevant or unrelated.

12 Finally, the Movant alleged that the Respondent used information obtained through a
13 search warrant to embarrass and humiliate Dr. Benzeevi. The Movant cited two precedents.
14 One case involves holding a party in contempt for disclosing information covered by a sealing
15 order and the other case involves the secrecy of grand jury proceeding. Movant Surreply in
16 Support of Sealing at 3 & 4. However, the current case is easily distinguishable from those
17 two precedents. The sole basis of the Movant's allegation is that the Respondent made his
18 opposition to Dr. Benzeevi's Motion available publicly. By alleging so, the Movant ignored the
19 essential notion that court records are open until the presumption of openness is overcome and
20 the presumption of openness may be overcome only after the Court holds a hearing and
21 expressly makes such finding. Cal. Rules of Court, Rule 2.551(c). Ironically, the Movant's
22 admission that such record was already made available to public only calls for the denial of
23 the sealing order. In *H.B. Fuller Co. v Doe, supra, 151 CA4th at 898*, the court found no
24 justification for sealing records that contain only facts already known or available to public.

25 In conclusion, the Movant again fails to properly balance the factors required to seal
26 under Cal. Rules of Court 2.550(d). Dr. Benzeevi's alleged overriding interest – his narrow
27 self interest in his financial privacy and in HCCA's internal corporate finances – simply
28 cannot defeat the public interest in a case where the public interest directly calls for the

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2 openness. The People respectfully request that the Court deny the movant's motion to seal and
3 the related protective order.
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5 **II. Respondent's Opposition to Movant's Motion to Seal and for a Protective Order**
6 **of Portions in its Surreply in Support of Motion for Return Seized Property**

7 As for Respondent's opposition to Movant's Motion to Seal and for a Protective Order
8 Portions of Dr. Yorai Benzeevi's Surreply in Support of His Motion for Return of Seized
9 Property and Related Evidentiary Hearing and Supporting Declaration of Bevan A. Dowd,
10 Respondent relies upon and incorporates the argument and authority stated above and in
11 Respondent's Supplement to Opposition to Seal & for a Protective Order regarding Portions
12 of Dr. Benzeevi's Memorandum in Support of His Motion for Return of Seized Property and
13 Related Evidentiary Hearing and Supporting Declaration of Duross O'brian; Declaration of
14 Bevan A. Dowd in Support Thereof.
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16 Dated: November 2, 2018

17 Respectfully submitted,

18 TIM WARD
19 DISTRICT ATTORNEY

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21 NADYA HANNAH
22 DEPUTY DISTRICT ATTORNEY
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